

Introduction and first reading:
Public hearing:
Second reading and enactment:

03/08/05
03/12/05
03/12/05

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Chapter 4 (CONDOMINIUMS AND COOPERATIVES) of Title 7 (PLANNING AND DEVELOPMENT), of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance revises the provisions of the City Code which require that condominium conversion projects file with the City copies of all papers filed with the Virginia Real Estate Board. The proposed ordinance requires that more complete information, including notices sent to tenants, be provided to the City at the same time as the information is provided to the state board or tenants in the building. In addition, the proposed ordinance establishes penalties for failure to provide required information, for providing inaccurate or misleading information, as well as for failing to pay tenant relocation costs as required by the City. These provisions are intended to afford the City enhanced tools to ensure that the conversion process complies with applicable state and local law.

Sponsor

Staff

Mildrilyn S. Davis, Director, Office of Housing
Ignacio Pessoa, City Attorney

Authority

§§ 2.01, 2.06, Alexandria City Charter
§§ 55-79.94, 55-487, Code of Virginia

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Chapter 4 (CONDOMINIUMS AND COOPERATIVES) of Title 7 (PLANNING AND DEVELOPMENT), of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 4 of Title 7 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

CHAPTER 4

Condominiums and Cooperatives

Sec. 7-4-1 Generally.

Any building or structure erected or proposed to be erected, ~~or converted or proposed to be converted,~~ within the city which is subject to the ~~Horizontal Property Act,~~ Condominium Act, Va. Code § 55-79.39, et seq., or Virginia Real Estate Cooperative Act, Va. Code § 55-424, et seq., ~~of the state~~ or any amendments thereto, or the land on which they may be proposed or situated, shall be treated as though it be a building, structure or land without the feature of ~~horizontal property,~~ condominium ownership or cooperative ownership, except where such treatment would be inconsistent with the general law governing a ~~horizontal property,~~ condominium or cooperative regime established under the ~~Horizontal Property Act,~~ Condominium Act or Virginia Real Estate Cooperative Act.

Sec. 7-4-2 Reserved. ~~Planning commission to adopt rules and regulations.~~

~~The city planning commission is hereby directed and authorized to adopt supplemental rules and regulations not inconsistent with general law governing any horizontal property; condominium or cooperative regime established under the state Horizontal Property Act, Condominium Act or Real Estate Cooperative Act and not inconsistent with the intention expressed in section 7-4-1, subject to the approval of the city council.~~

Sec. 7-4-3 Filing of documents and information.

- (a) (1) The developer of a conversion condominium as defined in the Condominium Act shall at the time the application for ~~of~~ registration of the condominium is filed with the Virginia Real Estate ~~Commission Board,~~ simultaneously file in the office of the clerk of the city council all the information which is required by the ~~commission Board~~ under section 55-79.89 of the Code of Virginia (1950), as amended.

1 (2) Such developer shall simultaneously file with the city clerk all supplemental
2 information or additional documents which are filed with the Board, including a copy
3 of the final registration.

4
5 (3) Such developer shall file with the city clerk a complete copy of the formal notice
6 actually sent to each of the tenants of the building pursuant to the Condominium Act,
7 including the name and address of each tenant to whom such notice was sent. Such
8 copy shall be filed with the city clerk on or before the date such notice is given to the
9 tenant named in the notice.

10
11 (4) There shall be no fee for such filings.

- 12
13 (b) (1) The developer of a conversion cooperative as defined in the Virginia Real Estate
14 Cooperative Act shall at the time the application for of registration of the cooperative
15 is filed with the Virginia Real Estate Commission Board, simultaneously file in the
16 office of the clerk of the city council all the information which is required by the
17 commission Board under section 55-498 of the Code of Virginia (1950), as amended.

18
19 (2) Such developer shall simultaneously file with the clerk all supplemental
20 information or additional documents which are filed with the Board, including a copy
21 of the final registration.

22
23 (3) Such developer shall file with the city clerk a complete copy of the formal notice
24 actually sent to each of the tenants of the building pursuant to the Cooperative Act,
25 including the name and address of each tenant to whom such notice was sent. Such
26 copy shall be filed with the city clerk on or before the date such notice is given to the
27 tenant named in the notice.

28
29 (4) There shall be no fee for such filings.

- 30
31 (c) No developer of a conversion condominium or a conversion cooperative may offer or
32 dispose of any interest in a condominium or cooperative unit located in the city prior
33 to the time the information regarding the condominium or cooperative which
34 includes such unit is filed in accordance with this section and any contract for the
35 purchase and sale of an interest in a unit in violation of this section shall be deemed
36 an illegal contract.

37
38 Sec. 7-4-4 Chapter supplemental and additional to other code provisions.

39
40 The provisions of this chapter shall be in addition and supplemental to all other provisions of
41 this code.
42
43

1 Sec. 7-4-5 Conversion condominiums and conversion cooperatives--definitions; extensions of
2 leases and dislocation reimbursement required.

3
4 (a) For the purposes of this section:

5
6 (1) "Declarant" shall mean any person or group of persons acting in concert
7 that:

8
9 a. Offers to dispose of his or its interest in a condominium unit not
10 previously disposed of or, as part of a common promotional plan, offers to
11 dispose of his or its cooperative interest not previously disposed of;

12
13 b. Reserves or succeeds to any special declarant right; or

14
15 c. Applies for registration of the condominium or the cooperative under
16 title 55, Code of Virginia (1950), as amended.

17
18 (2) "Disabled" means a person suffering from a severe, chronic physical or
19 mental impairment which results in substantial functional limitations.

20
21 (3) "Elderly" means a person not less than 62 years of age.

22
23 (b) The elderly or disabled tenants occupying as their residence, at the time of the
24 issuance of a general notice of condominium conversion or cooperative conversion,
25 shall be offered leases or extensions of leases on the apartments or units they then
26 occupied or, on other apartments or units of at least equal size and overall quality.
27 The terms and conditions thereof shall be as agreed upon by the lessor and the lessee,
28 except that the lessor must offer the lessee the option of a term of up to and including
29 three years, and provided that the rent for such apartment or unit shall not be in
30 excess of reasonable rent for comparable apartments or units in the same market area
31 as such converted condominium or cooperative. Nothing herein shall require that
32 such leases or extensions be offered on more than 20 percent of the apartments or
33 units in such converted condominium or cooperative, or that such leases or
34 extensions extend beyond three years from the date of such notice. Such leases or
35 extensions shall not be required, however, in the case of any apartments or units
36 which will, in the course of the conversion, be substantially altered in the physical
37 layout, restricted exclusively to nonresidential use or be converted in such a manner
38 as to require relocation of the tenant in premises outside of the project being
39 converted.

40
41 (c) Any declarant of any residential condominium or cooperative converted from
42 multifamily rental use shall pay any tenant displaced by the conversion for actual
43 moving expenses, but not to exceed the amount calculated according to the Moving

1 Expense Schedule promulgated pursuant to 24 VAC 30-41-220. In lieu of paying for
2 actual expenses incurred, the declarant may elect to pay the full amount calculated
3 according to such schedule, amounts not exceeding the amount to which the tenant
4 would have been entitled to receive under sections 25-239(b) and 25-247.1 of the
5 Code of Virginia (1950), as amended, if the real estate comprising the condominium
6 or cooperative had been condemned by the department of highways and
7 transportation, provided that such limitation The foregoing provisions shall not apply
8 if declarant has elected to follow Alexandria's housing relocation assistance policy.
9

10 Sec. 7-4-6 Violations and penalties.
11

12 (a) Any violation of the provisions of this chapter shall be punishable as a class one civil
13 violation.
14

15 (b) The following acts or omissions constitute a violation of this chapter:
16

17 (1) Failure to file any document required to be filed with the city clerk pursuant to
18 this chapter within the time required, or filing with the city clerk any document,
19 required or otherwise, in connection with the registration of a conversion
20 condominium or conversion cooperative which is materially false, inaccurate,
21 incomplete or contrary to law.
22

23 (2) Failure to send to a tenant within the time required any notice required to be
24 filed with the city clerk pursuant to this chapter, or sending any notice, required or
25 otherwise, to a tenant in connection with the registration of a conversion
26 condominium or conversion cooperative which is materially false, inaccurate,
27 incomplete or contrary to law.
28

29 (3) Failure to make any payment required by this chapter to a tenant displaced by a
30 condominium conversion or cooperative conversion, or unreasonably delaying,
31 conditioning or withholding any such payment.
32

33 (4) Failure to make or offer any lease required by this chapter to an elderly or
34 disabled tenant, or unreasonably delaying, withholding or conditioning any such
35 lease.
36

37 (c) Whenever the city attorney has reasonable cause to believe that any person has
38 engaged in, or is engaging in, or is about to engage in, the use of any deception,
39 fraud, false pretense, false promise or misrepresentation in connection with the
40 registration, sale, offering for sale, lease or offering for lease of a unit in a conversion
41 condominium or conversion cooperative to a tenant, the city attorney may obtain a
42 civil investigative order, or bring an action to enjoin such acts or omissions, pursuant
43 to the Virginia Consumer Protection Act, Va. Code § 59.1-196, et seq.

1
2
3 Section 2. That this ordinance shall become effective at the time and on the date of final passage.
4

5 WILLIAM D. EUILLE
6 Mayor
7

8 Introduction: 03/08/05

9 First Reading: 03/08/05

10 Publication:

11 Public Hearing:

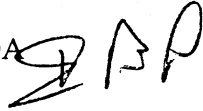
12 Second Reading:

13 Final Passage:

MEMORANDUM

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA
CITY ATTORNEY



DATE: MARCH 4, 2005

SUBJECT: CONDOMINIUM CONVERSION REGULATIONS

ISSUE: Consideration of an amendment to the City Code to require condominium conversion projects to provide additional information to the City, and to establish penalties for failure to provide required information, or for providing inaccurate or misleading information, in connection with a condominium conversion project.

RECOMMENDATION: That City Council pass the attached ordinance on first reading, and set the matter for public hearing and final passage on Saturday, March 12, 2005.

DISCUSSION: State law confers primary jurisdiction over the conversion of rental apartments to condominiums on the Virginia Real Estate Board, and, with the exceptions discussed below, precludes local governments from regulating the conversion process.

First, state law allows local governments to require that condo conversion projects file with the locality the same documents which must be filed with the Virginia Real Estate Board in connection with the conversion. Additionally, all localities can require that elderly or disabled tenants be afforded a three-year market rate lease after conversion, and certain localities, including Alexandria, are authorized to require that the developer provide relocation assistance payments to tenants displaced by the conversion. This authority has been exercised by the City in Title 7, Chapter 4 of the City Code.

The proposed ordinance enhances the existing provisions of the City Code to:

1. Require that all documents, including the application for registration and the notice required under state law to each tenant in the building, be filed with the City at the same time the document is filed with the state, or the notice is given to the tenant. Currently, filing with the City is required when registration of the condominium is issued, i.e., later in the state process, and the individual notices sent to tenants are not required to be filed with the City. The proposed changes will enable City staff more effectively to monitor the conversion process to assure that tenant interests are protected, and that the information in the notice, which includes the terms of the relocation payment to the tenant, as well as the terms and conditions of the tenant's opportunity to purchase his or her unit, is accurate and complies with state law and the provisions of the City Code.

2. Specify that relocation payments must be calculated based on costs actually incurred, subject to the maximum cap provided under state law, or that, for administrative ease, the developer may tender the maximum cap amount without requiring proof of actual costs. Housing staff have reported incidents in which tenants have been encouraged to accept reduced payments, upon foregoing their entitlement to actual costs.
3. Establish a \$5,000 civil penalty for failing to file required documents and notices with the City, for giving the City or a tenant materially inaccurate or misleading information, or for failing to pay or attaching unreasonable conditions to relocation payments, or for failing to provide or attaching unreasonable conditions to a required lease for an elderly or disabled tenant. These penalties are intended to give the City an enforcement mechanism to assure that tenant interests are protected. Additionally, the proposed ordinance specifies that the City can intervene under the Virginia Consumer Protection Act, in the event of "pattern and practice" violations. Such intervention allows the City to maintain an action for damages on behalf of tenants whose rights may have been violated.

Second, state law prohibits local governments from adopting any land use or land development regulations applicable to a condominium (or cooperative), which differ from the regulations applicable to fee simple ownership. Va. Code §§ 55-79.43, 55-429. The only exception is that the conversion of an existing building which does not comply with current zoning or land development regulations at the time of conversion, to either a condo or co-op, can be required to obtain a special use permit. However, the SUP must be approved if the applicant can "demonstrate to the reasonable satisfaction of the [Council] that the nonconformities are not likely to be adversely affected by the proposed conversion."

Since 1987, the City's Zoning Code has contained a provision which requires an SUP in cases where the cost of renovation of an existing building, which does not meet current parking requirements, in any two-year period, exceeds 33 and 1/3 percent of the building's market value. This provision was intended to address the increased parking demands typical of the post-renovation building, and applies equally to rental, co-op and condo property. Thus, this provision is not prohibited by, or subject to the state code's narrow criteria and mandatory approval language, set forth above, and the City Council is free, in granting or denying the SUP, to weigh all of the factors in favor of, and against, the renovation, and impose a broad range of conditions to assure that, on balance, the renovation is in the public interest. This provision is now codified as Section 8-200(F) of the current Zoning Ordinance. It appears that building values have appreciated more rapidly than the general rate of inflation, including renovation costs, since 1987. It is therefore likely that the 33 and 1/3 percent rule offers less protection against unregulated renovations today than at the time of adoption, and may warrant a downward adjustment to restore the *status quo ante*. Staff is reviewing this issue, and will return with a recommendation to the Council.

While the legislative changes proposed in the attached ordinance do not address the underlying issue of the loss of affordable housing through renovation and conversion of rental apartments into condominium units, these changes will allow City staff more effectively to monitor condo conversions, to assure that the limited rights of existing tenants are protected.

I will be pleased to answer any questions on Tuesday night.

cc: James M Hartmann
City Manager

Michele Evans
Assistant City Manager

Mark Jinks
Assistant City Manager

Mildrilyn S. Davis
Director, Office of Housing

Condo Conversion Memo.wpd

City of Alexandria, Virginia

MEMORANDUM

DATE: MARCH 9, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CONDOMINIUM CONVERSION UPDATE

In response to your request at the February 12 public hearing meeting, attached you will find a chart which details confirmed and unconfirmed condominium conversions in Alexandria.

Attachment

cc: Mildrilyn Davis, Director, Housing
Michele Evans, Assistant City Manager
Mark Jinks, Assistant City Manager

ALEXANDRIA CONDOMINIUM CONVERSIONS KNOWN OR RUMORED AS OF 3/9/05

Name	Address	Total Number of Units	Confirmed to be converted	Unconfirmed to be converted (or renovated)	Status
The Bearings (Governor Spotswood)	718 - 722 S. Washington St. 719 S. Saint Asaph St.	47	47		Application to State Registration Pending
The Bearings (Archstone of Old Town Boulevard Apts.)	906-922 S. Washington St. 820 A 820 B. S Washington St	112	112		Application to State Registration Pending
Pallazo (Archstone Strutfield Court)	2901 N. Hampton St.	392	392		Registered
Parkside Alexandria (Jamestown Village)	1523 N. Van Dorn St.	378	378		Registered
Exchange of Van Dorn (Metropolitan)	4840 Eisenhower Ave.	404	404		Application to State Registration pending
Rosemont Station (Dormar)	1 W. Maple St.	25	25		Application to State Registration pending
The Riverton (The Executive Club)	610 Bashford Ln.	78	78		Application to State Registration pending
EOS 21 (Oakwood)	241 S. Reynolds St.	1,524	374	1,150	Application to State Registration pending
Greystone	300-306 Commonwealth Ave.	12	0	12	Unconfirmed No application filed
Seminary Forest	4647 Seminary Road	461	0	461	Unconfirmed options include substantial rehabilitation with significant rent increases but no conversion
	TOTAL	3,433	1,810	1,623	

Note: Several additional properties are on the market and could potentially be purchased by entities that might elect to pursue condominium conversion. This list will be updated periodically to reflect new developments.

OFFICE OF THE CITY ATTORNEY

DOCKET ITEM NO. 13, MARCH 12, 2005

PROPOSED AMENDMENTS TO THE CONDOMINIUM ORDINANCE

13
3-12-05

1. Page 2, line 5:

Insert after "city clerk"

by hand delivery or certified mail, return receipt requested,

2. Page 2, line 23:

Insert after "city clerk"

by hand delivery or certified mail, return receipt requested,

3. Page 4, line 43:

Insert after "et seq."

(d) Prior to the issuance of a notice of civil violation pursuant to subsection (a), or to the commencement of an enforcement proceeding under subsection (c), the responsible party shall be afforded written notice and a 10 day opportunity to correct the violation; provided, however, that such notice and opportunity to correct shall not be required for any willful violation.